

STATE OF MICHIGAN
COURT OF APPEALS

AUGUSTINA SCHWARTZ,,

UNPUBLISHED

Plaintiff- Appellant,

v

No. 192171

Washtenaw Circuit Court

LC No. 94-001457-NO

UNIVERSITY OF MICHIGAN REGENTS d/b/a
UNIVERSITY OF MICHIGAN MEDICAL
CENTER, JILL SMITH, and ELAINE PERKINS,

Defendant- Appellees..

Before: Murphy, P.J., and Michael J. Kelly and Gribbs, JJ.

MICHAEL J. KELLY, J. (dissenting).

I respectfully dissent.

I cannot distinguish the facts and context of this case from the unanimous Supreme Court holding in *Dolan v Continental Airlines*, 454 Mich 373; 563 NW2d 23 (1997). In this case, as in *Dolan*, plaintiff has alleged she was fired because she reported a “violation of law.” “This allegation is sufficient to state a claim of wrongful discharge from employment under the WPA.” *Dolan, supra* at 382. Whether any reasonable jury could have found a causal connection between plaintiff’s discharge and her MIOSHA complaint should not have been decided as a matter of law on defendants’ motion for summary disposition. It is rudimentary that this Court examines all relevant affidavits, depositions, admissions, and other documentary evidence when reviewing a grant of summary disposition under MCR 2.116(C)(10) and construes the evidence in favor of the non-moving party. *Shallal v Catholic Social Servs*, 455 Mich 604, 609; 566 NW2d 571 (1997). I believe plaintiff has presented evidence that creates a triable issue of fact as to whether defendants’ proffered reason for refusing to reemploy her at the Taubman Center or place her in any of its satellite medical clinics was related to defendant Jill Smith’s, perception about the possible adverse consequences of plaintiff’s going public. There is no question that plaintiff had been exposed to toxins: she collapsed after being overcome with the fumes from the helicopter pad, had been hospitalized, and later took a leave of absence because of her susceptibility to contaminants. Smith, who was the Medical Center’s nurse manager and was

responsible for placing plaintiff in ambulatory nursing service locations, wrote to the director of the facilities a memo regarding plaintiff that concluded with the following language:

[Plaintiff] was quite vocal regarding the poor air quality here and wants to speak with someone higher up about this. Should I refer her to you? I am slightly worried that she might contact someone in the public spectrum (newspaper?) to report the unsafe working conditions. Page me if you have questions. [Plaintiff's exhibit 1.]

Plaintiff was subsequently assigned to work at only one satellite in May, 1994, despite her numerous contacts and unanswered phone calls to Smith. Since that day, May 17, 1994, plaintiff has not worked at the University; however, she has documented three additional experiences during which she became ill from toxic fumes such as paint, cleaning solutions, and nitrous oxide, which her physician attributed to enhanced chemical sensitivity resulting from plaintiff's exposure to the helipad fumes. The majority finds nearly dispositive significance in evidence indicating that there may have been some issue regarding plaintiff's ability to work, because she had filed a worker's compensation claim. However, plaintiff testified that she remained ready, willing, and able to work in a satellite clinic. To the extent that the evidence is contradictory, there remains an open jury question. Additionally, the majority finds against plaintiff on the basis of testimony that she was not oriented to work in many of the satellite medical clinics, and other clinics had limited openings for temporary nurses. In light of plaintiff's testimony that Smith had explicitly assured her she would be placed in a satellite clinic, and that plaintiff could "orient every place," and viewing the evidence in a light most favorable to plaintiff, as this Court must do, I cannot agree that plaintiff has failed to establish a prima facie case of retaliation under the WPA.

I would reverse.

/s/ Michael J. Kelly